

What Is Trafficking?

Definition

Both the Convention and the Protocol define trafficking as:

'the recruitment, transport, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.'

Trafficking in its internationally accepted definition breaks down in to **three elements**

- **The Act (What it is done)**
Recruitment, transportation, transfer, harboring or receipt of persons.
- **The Means (How it is done)**
Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payment or benefits to a person in control of the victim.
- **The Purpose (Why it is done)**
For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices and the removal of organs.

Legislation

The **Council of Europe Convention on Action against Trafficking in Human Beings (ECAT)** is a comprehensive treaty focusing on the protection of trafficked persons and the safeguarding of their rights. The UK government ratified this convention in December 2008. On an international level, the **Palermo Protocol** to Prevent, Suppress and Punish Trafficking in Persons (a protocol adopted by the UN to supplement the UN Convention Against Transnational Organized Crime) is also relevant. The UK government ratified this Protocol in February 2006. In addition to **the European Directive on Preventing and Combatting Trafficking 2011/36/EU**, **The European Convention on Human Rights (ECHR)** Article 4 'Prohibition on slavery. Further to this the Government is expected to be bound by the terms of its policy on the **National Referral Mechanism (NRM)** and treatment of victims of trafficking as expressed in its guidance: **Victims of Modern Slavery: Competent Authority Guidance (current version 7.0 dated 29/04/2019)**, **Victims of Modern Slavery Guidance for Frontline Staff (18/03/2016)** and **Discretionary Leave Considerations for Victims of Modern Slavery (10/09/2018)**.

Trafficking vs Smuggling

Trafficking survivors may have entered the country illegally, either knowingly or without their knowledge. They may also have had their passport or other forms of identification taken from them. Unlike the case of people smuggling, a trafficked person **will not be free to decide** what to do once they enter the country. They will be expected to provide labor or services that they have not agreed to. They will often have been subject to high levels of physical, sexual and psychological violence. For this reason, and because they may be afraid of the police, it may take time to disclose the full extent of their experiences.

The Home Office estimates that there may be 10,000-13,000 trafficked persons in the UK. The most common countries of origin include **Albania, Romania, Vietnam, Nigeria, Egypt, Slovakia, Bangladesh, China (as well as the UK itself)** We are currently seeing an increase in Punjabi speaking men from India who have been trafficking.

Dublin Cases and Tracking

We are currently seeing increased numbers of Dublin (Third Country Cases) who have been trafficked in Libya. If you have a Third Country Case and they have passed through Libya on their way to Europe please flag this immediately with staff as they may have experienced Modern Slavery, Forced Labor or have been sold as a slave. By entering in to the NRM this can often 'time out' the take back request meaning they may be able to challenge their removal to other EEA Member States.

Identifying Trafficking Victims: The NRM

As part of the implementation of the Council of Europe convention, the UK government created a **National Referral Mechanism (NRM)**. This is an identification and support process with two stages of decision-making. The first 'reasonable grounds' decision acts as an initial filter before a final 'conclusive grounds' decision is made.

Referrals into the system can only be made by a **First Responder**. These include the police, immigration officers, local authorities, the National Crime Agency, and named NGOs (including the Salvation Army, Kalayaan (Domestic Workers), Banardo's (Children) and Local Authorities. Solicitors cannot be first responders.

The only two first responders available to someone in detention are **The Salvation Army and The Home Office**. This can be problematic as acceptance rates from HO referrals are very low and The Salvation Army will only take trafficking referrals by phone. Why do you think this could be a problem?

Decisions about who is a survivor of trafficking are made by trained professionals in designated '**Competent Authorities**' (CA). In the UK, these are the UK Human Trafficking Centre (for people who aren't subject to immigration control – e.g. because they are a UK national) and the Home Office (for people who are subject to immigration control). It is important to make clear to clients that the information they provide for the NRM referral will be passed on to the Home Office to make a decision about their status as a survivor of trafficking.

(See Diagram for the NRM Process)

Once a referral is made, the competent authority will consider the details and apply a '**reasonable grounds**' test to consider if person is a survivor of trafficking. This decision should be made within five working days of the referral, but can often take a month or longer. If it is found that there are reasonable grounds to believe that the person is a survivor of trafficking they will be granted a **minimum of 45 calendar days for recovery and reflection**. No removal action will be taken against the person during this time. If the person is currently held in immigration detention, they should be released to supported accommodation following a positive reasonable grounds decision, although in practice the Home Office will weigh other immigration factors (e.g. criminal convictions, previous absconding) against this presumption in favor of release. **A Positive Reasonable Grounds decision does NOT automatically mean that someone will be released from detention.**

If the reasonable grounds decision is negative, there will be no further trafficking identification decision. There is no right of appeal to challenge this decision. However, if further information comes to light, this can be submitted to the competent authority with a request for the decision to be reviewed, or a fresh referral can be made.

Following a positive reasonable grounds decision, competent authorities are required to make a second identification decision which is to conclusively decide whether the individual is a survivor of trafficking. It is expected that this decision will be made in 45 calendar days, but it can take six months or more in practice at present it isn't uncommon for it to take up to 3 years. This period can also be extended if it is necessary to allow more time for the person to overcome their trauma and provide more information.

Once an individual has been conclusively identified as a trafficked person, they are entitled to a further 45 days' accommodation and are eligible to apply for a year's leave to remain for personal reasons. The police can also apply for leave to remain on their behalf if they are needed to take part in police investigations.

Support

Victims of Trafficking with a Positive Reasonable Grounds Decisions are eligible for accommodation in a Salvation Army Safe House and £65 per week if they're in the Safe House or to £37.75 if they're in the community. In the Safe House the Victim of Trafficking will receive a key worker and support. The Government was hoping to reduce this amount however this has recently been successfully challenged in the High Court. If a client has a conviction they may not be eligible for Safe House accommodation which may prolong their time in detention.

Challenges of working with trafficked people.

Trafficking is a complex issue which takes many forms. It is unlikely that a trafficked person will initially feel comfortable disclosing their experiences of trafficking to us or that they will be able to identify themselves as a survivor of trafficking.

Potential survivors of trafficking may be unforthcoming with information, and may tell their stories with obvious errors. It is not uncommon for traffickers to coach those who have been trafficked or provide stories for them to tell if approached by the authorities. The errors in their account may be because their initial stories are created by others and learnt.

Early accounts of trafficking may also be affected by the impact of trauma. In particular, survivors may experience Post Traumatic Stress Disorder, which can result in symptoms of hostility, aggression, difficulty in recalling details or entire episodes, and difficulty concentrating. They may also be uncertain about the places and countries they have travelled through as their traffickers are likely to withhold that information from them.

Someone's experiences of trafficking may also have occurred in the past (e.g. if trafficked to the UK as a child) or in a different country (e.g. if they were trafficked through Libya, Germany or France on the way to the UK). For this reason, indicators of trafficking may not become apparent unless talking to someone about their history, as well as their present and recent past.

Case Studies

Look at the Case Studies below and answer the following questions.

1. Do you think there are Trafficking indicators? If so what are they?
2. What further information would be good to ask?
3. How might the person be feeling and what problems may they be facing?
4. How could you support this person whilst they are in detention?

Case Study One

A client calls in with the help from a friend. He cannot speak English and his friend tells you he feels very sad. You call him back with a Punjabi Interpreter. On the call he tells you that he feels in poor health and suffers from flash backs, nightmares and that he is scared to walk around in case someone grabs him from behind. He tells you that before he was detained he was living somewhere where conditions were very bad. He says its better and safer in detention as it was like a prison where he was living before. He tells you that his parents were killed when he was 14 and doesn't want to return to India. He explains that where he was kept he was made to work day and night. He says that when he asked for money he was offered cigarettes and in the end he worked for the "cigarettes". He is currently unrepresented.

Case Study Two

A Sudanese client calls in and sounds quite distressed. As he has limited English you call him back with an Arabic Interpreter. On the call he tells you that he paid for a lorry journey to come to UK last year but never had to do work that he didn't want to do. He explains that he went through Libya and they treated him very violently and beat him. He says that he was detained a month ago because he was fingerprinted before in France. His friend recommended a Sudanese solicitor to him- he doesn't know their details. He tells you that he spoke to immigration today and that they asked him for information. They asked about what happened to him, how he was tortured, if he suffered trafficking or slavery. They asked if he wants a solicitor to write it, or if it is okay for them to write it down. He said he has no solicitor.

Case Study Three

You meet a Vietnamese client at a workshop. He is not that confident speaking English but tells you that he has urgent health concerns including the loss of vision in one eye, vision deteriorating in his good eye and pressure in his head. He tells you that he had a solicitor who took his case but then dropped it. He mentions something about being forced to work and something about Cannabis. He tells you that he was picked up by police in Autumn 2017 for dealing, imprisoned for 9 months and then transferred here.

Action

Due to the complexity of trafficking cases and some of the issues detailed below it is generally best for staff to oversee trafficking referrals. This is a guide to the steps we will take. Please speak to a member of staff immediately if you have concerns that an individual may have been trafficked.

- When doing a new referral or having built a relationship with someone over time, watch out for indicators of trafficking. This includes talking about:

- owing money to the 'mafia', a gang or 'snakehead' in their country of origin;
 - threats made to themselves or their family if this debt is not repaid;
 - long, arduous working conditions with little or no payment;
 - being picked up sleeping rough in the UK by someone who offers them a place to stay and a job;
 - having their travel documents arranged for or taken from them;
 - having made a long journey across land to the UK, often with unexplained breaks along the way;
- or
- having been brought here as a child by someone they were told was a family member (e.g. a mother, father, aunt or uncle), where they are not sure of the identity of this person.
 - Other indicators include extreme deference to or fear of authority.

- Where one or more indicators are present, ask the person whether anyone has ever spoken to them about 'trafficking' or the 'NRM'. If they are not sure, ask them to send us a **Monthly Progress Report or other immigration documents to clarify.**

- If there is a suspicion that the person has been trafficked and an NRM referral has not yet been made, it is possible to seek their consent to refer them to agencies that specialize in working with trafficked persons and are able to make referrals into the NRM. For men in London, this organization is the Salvation Army (their phone line is open 24/7: 0300 303 8151). **As a rule we will only refer to the Salvation Army as a last result as it is generally better for someone's solicitor to do this so they can check that any statement submitted correlates with other evidence submitted to the Home Office (e.g., as part of an Asylum application)**

- We can also ask for their consent to speak to their immigration solicitor, if they have one, about what s/he is doing in respect to these indicators of trafficking. If we or the solicitor need advice, it's possible to speak to trafficking specialists at the Refugee Council (people under 18) and the Children's Society (under 25) or the Anti-Trafficking Legal Project (AtLeP) (<http://www.atlep.org.uk/>). AtLeP is a network of solicitors, barristers, and specialist practitioners who advise, represent and support trafficked persons.

- If a client has no solicitor and has not previously spoken to a legal advisor about trafficking, we can (with their consent) draft a statement about their experiences of trafficking for them to take along to a legal surgery appointment (preferably with Wilsons if they are on the roster). This can be helpful particularly where there is a language barrier or the client feels uncomfortable disclosing their experiences of trafficking. Once a solicitor has taken on their case, we or the solicitor can then refer

them to a first responder and assist them through this process. Legal aid is not available for trafficking matters prior to a positive reasonable grounds decision being made, but may be available via another avenue (e.g. if someone has also claimed asylum).

- Please ask the person about their physical and mental health. It may be helpful for us to request medical records for them to take along to a legal surgery appointment or for us to make a referral to Medical Justice.

- Where a person has a criminal conviction potentially arising from their experiences of trafficking (e.g. for cannabis cultivation, gang-related crimes, pickpocketing or petty theft), we can also seek their consent to refer them to Philippa Southwell, a solicitor at Birds who specialises in criminal appeals for potential trafficking survivors. Please speak to staff about this.

- If a positive reasonable grounds decision is made following referral into the NRM, the Home Office must consider releasing that person from detention. However, in practice they often do not do so. If the Home Office maintains detention, the client's solicitor should apply for bail or pursue an unlawful detention JR. Unfortunately, both the Salvation Army and solicitors are often unaware of this. The Salvation Army will not take steps to advocate for clients in this process and therefore it falls on us and a solicitor or BID to do so.

- Once released from detention, a trafficked person can either live at a private address (if one is available) or in supported accommodation funded by the government and run by the Salvation Army or other NGO. It is important that the issue of re-trafficking is taken into account (e.g. in ensuring that they do not return to an area where they may be re-trafficked).

- Prior to release, we can talk to the person about what they might do if they feel unsafe outside detention (e.g. call a trusted friend, solicitor or the police), where they might go to feel safe (e.g. a well-lit area, shop or police station), and the importance of avoiding areas where they have previously been exploited. It might also be helpful to practice key phrases in English (e.g. 'I need help') or role-play calling 999.